

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH MARK BAUMGARDNER,

Defendant.

CR 19-14-M-DLC

ORDER

United States Magistrate Judge Kathleen L. DeSoto entered Findings and Recommendation in this matter on August 22, 2019. Neither party objected and therefore they are not entitled to *de novo* review of the record. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

This Court will review the Findings and Recommendation for clear error.

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge DeSoto recommended this Court accept Joseph Mark Baumgardner’s guilty plea after Baumgardner appeared before her pursuant to Federal Rule of Criminal Procedure 11, and entered a plea of guilty to one count of Conspiracy to

Defraud the United States in violation of 18 U.S.C. § 371 (Count I), as set forth in the Indictment. In exchange for Defendant's plea, the United States has agreed to dismiss Counts VI, VIII, X, and XII of the Indictment.

I find no clear error in Judge DeSoto's Findings and Recommendation (Doc. 44), and I adopt them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS ORDERED that Joseph Mark Baumgardner's motion to change plea (Doc. 25) is GRANTED and Joseph Mark Baumgardner is adjudged guilty as charged in Count I of the Indictment.

DATED this 9th day of September, 2019.



Dana L. Christensen, Chief District Judge
United States District Court